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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF UTAH

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UNITED STATES DEPARTMENT OF  
JUSTICE, TAX DIVISION,

Plaintiff,

vs.

RAPOWER-3, LLC,

Debtor.

**MEMORANDUM DECISION AND  
ORDER WITHDRAWING THE  
REFERENCE and FINDING MOOT  
MOTION FOR STATUS CONFERENCE**

Case No.: 2:18-cv-00608-DN

Judge David Nuffer

In re: RAPOWER-3, LLC,  
Debtor

**ORDER DISMISSING THE CASE**

Bankr. No. 18-bk-24865 Chapter 11  
Judge Kevin R. Anderson

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RAPOWER-3, LLC, INTERNATIONAL  
AUTOMATED SYSTEMS, INC., LTB1,  
LLC, R. GREGORY SHEPARD, NELDON  
JOHNSON, and ROGER FREEBORN,

Defendants.

**ORDER FINDING MOOT MOTION  
FOR STATUS CONFERENCE**

Case No. 2:15-cv-00828 DN

District Judge David Nuffer

Magistrate Judge Evelyn J. Furse

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**ORDER WITHDRAWING REFERENCE - Case No. 2:18-cv-00608-DN**

In Case No. 2:18-cv-00608-DN, the United States filed a motion to withdraw the reference<sup>1</sup> of Bankr. No. 18-bk-24865 (Chapter 11) due to this court's familiarity with the facts

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<sup>1</sup> Case No. 2:18-cv-00608-DN, docket no. [2](#), filed July 27, 2018.

underlying the dispute between the United States and RaPower-3, LLC and other defendants in Case No. 2:15-cv-00828 DN. In its response, RaPower-3 agreed that this Court should withdraw the reference.<sup>2</sup> This motion<sup>3</sup> is GRANTED. The reference of *In re: RAPOWER-3, LLC*, Bankr. No. 18-bk-24865 (Chapter 11) is WITHDRAWN.

**ORDER DISMISSING *In re: RAPOWER-3, LLC*, Bankr. No. 18-bk-24865 (Chapter 11)**

In *In re: RAPOWER-3, LLC*, Bankr. No. 18-bk-24865 (Chapter 11), the United States moved to dismiss RaPower-3's bankruptcy petition, with findings that the filing was in bad faith, or for alternative relief.<sup>4</sup> RaPower-3's response disavowed bad faith in filing its petition but agreeing that the petition should be dismissed.<sup>5</sup> The United States replied insisting that dismissal with prejudice and adverse findings is appropriate.<sup>6</sup> RaPower-3 filed its own motion to dismiss, insisting that these findings should not be made.<sup>7</sup>

Deep familiarity with the facts of this case, after extensive motion practice and bench trial, with numerous exhibits; careful review of proposed findings of fact and conclusions of law; availability of transcripts of trial; timing of the filing which has prevented entry of final orders including a receivership order; review of the bankruptcy case filings; and review of papers on these motions shows that the filing was clearly in bad faith and that dismissal of the bankruptcy case should be with prejudice to any filing within 180 days.<sup>8</sup> The summary in pages 6-13 of the

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<sup>2</sup> ("Debtor hereby stipulates to the DOJ's request to withdraw the reference"), Case No. 2:18-cv-00608-DN, docket no. [4](#), filed August 15, 2018.

<sup>3</sup> Case No. 2:18-cv-00608-DN, docket no. [2](#), filed July 27, 2018.

<sup>4</sup> Bankr. No. 18-bk-24865, docket no. [13](#), filed July 27, 2018.

<sup>5</sup> Bankr. No. 18-bk-24865, docket no. [30](#), filed August 10, 2018.

<sup>6</sup> Bankr. No. 18-bk-24865, docket no. [42](#), filed August 17, 2018.

<sup>7</sup> Bankr. No. 18-bk-24865, docket no. [45](#), filed August 17, 2018.

<sup>8</sup> See [Frieouf v. United States](#), 938 F.2d 1099, 1105 (10th Cir. 1991).

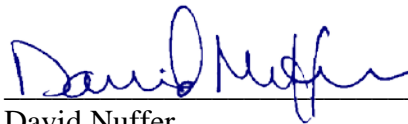
motion to dismiss<sup>9</sup>, and the United States' reply<sup>10</sup> to the debtor's arguments are correct statements of the facts, and correct application of the law.

**MOTION FOR STATUS CONFERENCE IS MOOT**  
**Case No. 2:15-cv-00828 DN and Case No. Case No. 2:18-cv-00608-DN**

The United States' Motion for Status Conference or in the Alternative Request to Submit for Decision<sup>11</sup> is found MOOT.

Signed August 22, 2018.

BY THE COURT



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David Nuffer  
United States District Judge

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<sup>9</sup> Bankr. No. 18-bk-24865, docket no. [13](#), filed July 27, 2018, at 6-13.

<sup>10</sup> Bankr. No. 18-bk-24865, docket no. [42](#), filed August 17, 2018, at 2-5.

<sup>11</sup> Case No. 2:15-cv-00828 DN, docket no. [438](#), filed August 17, 2018; Case No. 2:18-cv-00608-DN, docket no. [5](#), filed July 27, 2018.